

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
LAND COURT DEPARTMENT**

**STANDING ORDER NO. 2-06
(Effective September 26, 2006)**

**PROCESSING AND HEARING OF CLAIMS FOR JUDICIAL REVIEW OF
MATTERS ON THE ADMINISTRATIVE RECORD**

1. Claims filed in the Land Court seeking judicial review of administrative agency or other proceedings on the administrative record pursuant to the standards set forth in G.L. c. 30A, § 14, G.L. c. 249, § 4, or similar statutes, whether joined with a claim for declaratory relief under G.L. c. 231A, or any other claim, shall be heard in accordance with the following procedures.¹

2. The administrative agency or other body whose proceedings are to be judicially reviewed in this manner (the agency) shall, by way of answer to such claims, file the original or certified copy of the record of the proceeding under review (the record) within ninety (90) days after service upon it of the Complaint. Such record “shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties.” G.L. c. 30A, § 14(4). Upon service of the Complaint, the agency shall notify all parties of procedures for acquiring a transcript of the hearing testimony. The agency shall also inform the parties of their obligation to provide a transcript, or the stipulated portions thereof, to the court if alleging that the agency’s decision is not supported by substantial evidence or is arbitrary or capricious, or is an abuse of discretion. A request for a copy of the transcript must be made by a party within thirty (30) days after service of the Complaint, and such transcript, or the stipulated portions thereof, shall be made a part of the record. Any party seeking to challenge the agency’s decision as not supported by substantial evidence or as arbitrary or capricious, or an abuse of discretion, shall have an affirmative obligation to obtain a copy of the transcript, or the stipulated portions thereof, in support of its position, and to ensure that it is timely included in the record submitted to the court.

The court may assess the expense of preparing the record, including the cost of the transcript, as part of the costs of the case. G. L. c. 30A, § 14(4). Additionally, “the court may, regardless of the outcome of the case, assess any one unreasonably refusing to stipulate to limit the record, for the additional expenses of preparation caused by such refusal.” G. L. c. 30A, § 14(4). The court may require or permit subsequent corrections or additions to the record when deemed desirable. G. L. c. 30A, § 14(4). The time for filing the record may be shortened or enlarged, for good cause shown, upon allowance of an appropriate motion.

¹ If the Complaint also raises claims subject to *de novo* or other type of review, those claims shall be addressed and resolved in the manner required by the applicable statute and the Massachusetts Rules of Civil Procedure.

3. The following motions raising preliminary matters must be served on the parties and filed with the court not later than twenty (20) days after service of the record:

- (a) Motions authorized by Mass. R. Civ. P. 12(b) or 12(e).
- (b) Motion for leave to present testimony of alleged irregularities in procedure before the agency, not shown in the record (G.L. c. 30A, § 14(5)).
- (c) Motion for leave to present additional evidence (G.L. c. 30A, § 14(6)).

Any party failing to serve and file such a motion within the prescribed time limit, or within any court-ordered extension, shall be deemed to have waived any such motion (unless related to jurisdiction) and the case shall proceed solely on the basis of the record. Responses to such motions shall be served and filed not later than seven (7) days after service of the motion (the number of days to be calculated as provided in Mass. R. Civ. P. 6(a)), and the court, in its discretion, may either schedule the motion for hearing or decide it on the submitted papers. If the motion specified in (c) is allowed, all further proceedings shall be stayed until the agency has complied with the provisions of G.L. c. 30A, § 14(6).

4. A claim for judicial review on the administrative record shall be resolved through a motion for judgment on the pleadings, Mass. R. Civ. P. 12(c), unless the court's decision on any motion specified in part 3 above has made such a resolution inappropriate. All Rule 12(c) motions and supporting memoranda shall be served and filed within thirty (30) days of the service of the record or of the court's decision on any motion specified in part 3 above, whichever is later. The responses to such motions shall be served and filed within thirty (30) days after service of the motion and memorandum. The court may grant an extension of time for good cause shown. Memoranda shall include specific page citations to matters in the record.

5. The Recorder or her/his designee will schedule a hearing date after receiving the motion materials. No pre-trial conference will be held, and no pre-trial memorandum filed, unless specifically ordered by the court. No testimony or other evidence shall be presented at the hearing, and the review shall be confined to the record. A party may waive oral argument and submit on the brief by filing a written notice. Failure to appear at the time and place scheduled for hearing shall also be deemed such a waiver. Such waiver by a party shall not affect the right of any other party to appear and present oral argument.